THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the Case.

Criminal Misc. Appl. No. 447 of 2006

Date of Decision : 22.06.2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date:- 22.06.2006 Initial of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.447 of 2006

1. Murari Lal S/o Mangli Prasad
2. Hari Om S/o Murari Lal
3. Smt. Nanhi Devi W/o Sri Murari Lal
4. Arun Kumar @ Annu S/o Sri Murari Lal
5. Km. Shilpi D/o Sri Murari Lal
6. Km. Shalu D/o Sri Murari Lal
7. Km. Pooja D/o Sri Murari Lal
8. Laxmi Devi W/o late Sri Om Prakash
   All R/o Chinora
   District Sahjanpur, U.P. ….Applicants

Versus

1. State of Uttaranchal
2. C.J.M., Champawat, Dist. Champawat
3. Om Shankar Saxena
   S/o Sri Sohan Lal Saxena
   R/o Ghasiyari Mandi
   Tanakpur P.S. Tanakpur
   District Champawat, Uttaranchal ….. Respondents

Sri Rajeev Sharma learned counsel for the applicants.
Sri Amit Bhatt and Sri Rajeev Mohan learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 15.02.2006 passed by the Judicial Magistrate, Champawat in criminal case No.99/2005 Om Shankar Vs. Murari Lal & others under section 323, 504, 506, 498A IPC & 3/4 Dowry Prohibition Act.

2. Brief facts of the case are that the respondent No.3 moved a compliant before the Magistrate against the applicants under section 323, 504, 506, 498A IPC & ¾ D.P. Act alleging therein that the marriage was solemnized in between the applicant no.2-Hari Om and Poonam-daughter of the respondent no.3 according to Hindu rites and customs. After the marriage, the

applicants were demanding dowry. When the said demand was not fulfilled, the daughter of the respondent no.3 was forced to leave the house of the applicants and she started to live with her father. It was alleged that the respondent no.3 also gave complaint to the police station Tanakpur and S.S.P. but no action was taken by them. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 08.12.2005. Feeling aggrieved by this, the applicants preferred the present petition.

3. It was contended on behalf of the applicants that there is no prima facie case against the applicants and they have been falsely implicated in this case. Learned A.G.A. refuted the contention. The complaint itself shows that the accused persons were demanding a colour T.V. and Rs.20,000/- in cash. When the demand was not fulfilled the poison was administered to the daughter of the respondent no.3 and at last he was forced to leave the house of her in-laws. Learned A.G.A. relied upon the decision of the Hon'ble Supreme Court in **Banhisikha Roy Vs. Somnath Roy & others reported in 2006(1) SCC (Cri) p/625,** in which it was held that if the complaint itself shows the allegations of cruelty meted out to the wife in connection with the demand of dowry, then the prima facie under section 498-A IPC is made out against the accused. The case in hand is squarely covered by this said decision of the Aped Court.

4. It was contended that when the daughter of the respondent no.3 did not return to her matrimonial house the applicant filed a divorce petition under section 13 of Hindu Marriage Act before the Magistrate. It was contended that the present complaint filed the

respondent no.3 is a counter blast of the petition under section 13 of the Hindu Marriage Act. I could not understaind as to how the latter complaint would be the counter blast of the petition under section 13 of the H.M. Act. However, the question whether it is a counter blast or not can only be considered at the time of trial. There is no prima facie material on record to hold that the present complaint is a counter blast of the said petition. I do not find any substance in the contention of the learned counsel for the applicants.

5. It was further contended that the complainant has implicated all the family members in this case. It was further contended that the applicants are innocent. Learned AGA refuted the contention. This Court has to see the averments made in the complaint and evidence. It was pointed out that there is evidence that all the applicants has demanded dowry and they had also committed cruelty upon poonam. It is well settled position of law that the inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Cr.P.C. or any other statute to the institution and continuance of the criminal proceedings

or where a criminal proceedings to manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. **{See R.P. Kapur Vs. State of Punjab A.IR. 1960 SC 866, M. Krishnan Vs. Vijay Singh & another 2001(8) SCC 645, State of Haryana Vs. Bhajan Lal AIR 1992 SC 604, 1992 SCC(Cri) 426 and Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) P/1314}.**

6. Perusal of the present complaint itself reveals that the prima facie case is made out against the applicants. It has been held by the Hon'ble Apex Court in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

7. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act

as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

8. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 22.06.2006

LSR